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10/625,948	07/23/2003	Satoshi Shimizu	3688ME-43	9913

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EXAMINER
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CHORBAJI, MONZER R

ART UNIT	PAPER NUMBER
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1744

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/19/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/625,948

Applicant(s)

SHIMIZU ET AL.

Examiner

MONZER R. CHORBAJI

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

**This final action is in response to the amendment/arguments received on 01/26/2007**

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 2-9, 11, 13-14, 16-18 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart (U.S.P.N. 6,413,476) in view of Mitsuharu (EP 0 836 856 A2).

Regarding claim 16, Barnhart discloses an incense burner (figure 2) that includes a heater (figure 1:7) and a heating plate (figure 2:8). Barnhart fails to teach using PTC heater. Mitsuharu discloses the use of a PTC heater (figure 8B:16) having a top cover (figure 8B:17), a heater spring (figure 8B:18b) and a heater cover (figure 8B:5). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute Barnhart heater with Mitsuharu PTC heater since using such a heater results in optimal evaporation of the aromatic material as taught by Mitsuharu (page 3, col.3, lines 45-52).

Regarding claims 2-8 and 32, Barnhart teaches the following: a first container having its bottom in contact with the heating plate (figure 2:6), a second container (figure 2:2) having its bottom spaced apart from the heating plate (figure 2:2 and 8), second container (figure 2:2) is mounted on a top cover (figure 6:2 and 28), second container has one leg (figure 5:2 and 27), heating plate is made of metal (col.3, lines 63-66), bottom part of first container is made of metal (col.3, lines 65-67), second container is capable of being made of any material, second container has a handle part (figure 6:2 and 29) and a leg part that is provided in a direction of the handle part (figure 5:27 and figure 6:29).

Regarding claims 9, 11, 13-14 and 17-18, Barnhart teaches the following: first conduction plate (unlabeled bottom part of 6 in figure 2), fixing plate (figure 1:8) is

capable of storing and positioning the heater, second conduction plate (unlabeled bottom part of 3 in figure 2), area of heater (unlabeled area of heater 7 in figure 3) is smaller than area of the heating plate (unlabeled bottom surface area of 2 in figure 2) and the heating plate has a peripheral part (figure 6:2 and 29). Barnhart fails to disclose the use of PTC heater. Mitsuharu discloses the use of a PTC heater (figure 8B:16) that includes the following: a top cover (figure 8B:17) having a peripheral part (unlabeled outer parameter of 17 in figure 8B), a heater spring (figure 8B:18b), and a heater cover (figure 8B:5) that has a bearing part (unlabeled outer parameter of 5 in figure 8B) that is capable of being rotated. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute Barnhart heater with Mitsuharu PTC heater since using such a heater results in optimal evaporation of the aromatic material as taught by Mitsuharu (page 3, col.3, lines 45-52).

5. Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart (U.S.P.N. 6,413,476) in view of Mitsuharu (EP 0 836 856 A2) as applied to claims 9, 11 and further in view of Hirano (U.S.P.N. 6,090,349).

Regarding claims 10 and 12, both Barnhart and Mitsuharu fail to teach the use of a rubber ring. Hirano teaches the use of a rubber ring (figure 1:23a) in a diffusing apparatus. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Barnhart device by including a rubber ring as taught by Hirano since a rubber ring has a vibration insulating properties (Hirano, col.2, lines 64-67) thereby preventing tipping of the device.

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart (U.S.P.N. 6,413,476) in view of Mitsuharu (EP 0 836 856 A2) as applied to claim 16 and further in view of O'Neil (U.S.P.N. 4,739,928).

Barnhart fails to teach the use of an outer lid-guard having a plurality of openings such that the lower end extends downwardly beyond the surface of the heating plate. O'Neil discloses an outer lid-guard (figure 3:20) having a plurality of openings (figure 3:84) such that the lower end (figure 3:68) extends downwardly beyond the surface of the heating source (figure 5:16). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Barnhart device by including an outer-lid guard as taught by O'Neil in order to create an additional adjustability means for controlling the diffusion rate of the fragrance (O'Neil, col.1, lines 61-66).

7. Claims 19-20, 22 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart (U.S.P.N. 6,413,476) in view of Patel et al (U.S.P.N. 5,647,052).

Regarding claim 19, Barnhart discloses an incense burner (figure 2) that includes the following: an upper frame (unlabeled inner structure that includes 6, 8, 9 and 11 of figures 2-3) on its top a heating body (figure 1:7), a light source (figure 3:11), a pillar part having a pillar covering light source inside the pillar (figure 3: 11 and 4), an outer frame encircling an outer side of the pillar part (figure 2:12), a lower frame unit (unlabeled lower frame in figure 2 that encloses fan 21), outer frame (figure 2:12) is sandwiched between upper frame (unlabeled inner structure that includes 6, 8, 9 and 11

of figures 2-3) and lower frame (unlabeled lower frame in figure 2 that encloses fan 21) and lower frame unit is fixed to the pillar part with fastening member (figure 1:25).

Barnhart fails to teach the use of transparent or translucent material for constructing the incense burner. Patel teaches the use of transparent or translucent material (col.4, lines 63-66) in designing the outer frame of an air deodorizer. As a result, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Barnhart device by designing its structures with transparent or translucent material as taught by Patel since such material results in a deodorizer having decorative effects (Patel, col.4, lines 63-67).

Regarding claims 20, 22 and 31, Barnhart discloses an incense burner (figure 2) that includes the following: an upper frame (unlabeled inner structure that includes 6, 8, 9 and 11 of figures 2-3) on its top a heating body (figure 1:7) that is attached to the pillar part (figure 1:18 and 5), a pillar part having a pillar encircling the light source (figure 3: 11 and 4) and the control part (figure 1:19, 13-14 and 16-17) is held by the pillar part (figure 1:4) and the lower frame unit (unlabeled lower frame in figure 2 that encloses fan 21).

8. Claims 21 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart (U.S.P.N. 6,413,476) in view of Patel et al (U.S.P.N. 5,647,052) as applied to claim 20 and further in view of Borut et al (U.S.P.N. 6,389,739).

Regarding claims 21 and 23-24, Barnhart discloses an incense burner (figure 2) having an upper frame (unlabeled inner structure that includes 6, 8, 9 and 11 of figures 2-3) on its top a heating body (figure 1:7) that is attached to the pillar part (figure 1:18

and 5). However, both Barnhart and Patel fail to teach the following: a rotatable pillar part having a plurality of arm parts with attachment pieces on its top and each arm part is divided into two parts. Borut discloses a rotatable pillar part (figure 1:14 and 12) having a plurality of arm parts (figure 2:26) with attachment pieces on its top (figure 2:50) and each arm part (figure 2:26) is divided into two parts (foot part 28 and unlabeled horizontally extending part of 26 in figure 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Barnhart device by including a rotatable pillar part as taught by Borut so that controlled and adjustable burn rates of the deodorant are achieved (Borut, col.1, lines 14-16).

9. Claims 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart (U.S.P.N. 6,413,476) in view of Patel et al (U.S.P.N. 5,647,052) as applied to claim 19 and further in view of McKsymick (U.S.P.N. 6,637,350).

Regarding claims 27-28, Barnhart discloses an incense burner (figure 2) having a control part (figure 4:19) and a pillar part (figure 3:4) attached to (figure 1:25) the lower frame unit (unlabeled lower frame in figure 2 that encloses fan 21), which has an under frame cover (unlabeled bottom surface of lower frame unit in figure 2). Both Barnhart and Patel fail to teach the use of a sliding part. McKsymick discloses the use of a sliding member (figure 9:70) having the following parts: first urging member (figure 8:80), push rod (figure 8:72) and a second urging member (figure 8:78). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Barnhart device by adding a sliding member as taught by McKsymick in

order to prevent the inadvertent movement of the device (McKsymick, col.5, lines 1-8) resulting in having a stable incense burner.

10. Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart (U.S.P.N. 6,413,476) in view of Borut et al (U.S.P.N. 6,389,739).

Regarding claims 25-26, Barnhart discloses an incense burner (figure 2) that includes the following: an upper frame unit (unlabeled inner structure that includes 6, 8, 9 and 11 of figures 2-3) having a heating body (figure 1:7), a pillar part having a pillar encircling the light source (figure 3: 11 and 4), an outer frame encircling an outer side of the pillar part (figure 2:12), a lower frame unit (unlabeled lower frame in figure 2 that encloses fan 21), outer frame (figure 2:12) is sandwiched between a peripheral part of the upper frame unit (unlabeled inner structure that includes 6, 8, 9 and 11 of figures 2-3) and a peripheral part of the lower frame unit (unlabeled lower frame in figure 2 that encloses fan 21) and lower frame unit is combined with the pillar part by a fastening member (figure 1:25). Barnhart fails to teach the following: a rotatable pillar part having a plurality of arm parts with attachment pieces on its top and each arm part is divided into two parts. Borut discloses a rotatable pillar part (figure 1:14 and 12) having a plurality of arm parts (figure 2:26) with bent attachment pieces on its top (figure 2:50) and each arm part (figure 2:26) is divided into two parts (foot part 28 and unlabeled horizontally extending part of 26 in figure 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Barnhart device by including a rotatable pillar part as taught by Borut so that controlled and adjustable burn rates of the deodorant are achieved (Borut, col.1, lines 14-16).

11. Claims 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart (U.S.P.N. 6,413,476) in view of McKsymick (U.S.P.N. 6,637,350).

Regarding claims 29-30, Barnhart discloses an incense burner (figure 2) having a heating body (figure 1:7), a switch (figure 4:19) and a housing having opening on its bottom (figure 1:12). Barnhart fails to teach the use of a sliding part. McKsymick discloses the use of a sliding member (figure 9:70) having the following parts: slider main body (figure 9:76), first urging member (figure 8:80), push rod (figure 8:72), a second urging member (figure 8:78) and a slider stopper (figure 8:84). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Barnhart device by adding a sliding member as taught by McKsymick in order to prevent the inadvertent movement of the device (McKsymick, col.5, lines 1-8) resulting in having a stable incense burner.

#### ***Remarks***

12. The amended drawings submitted on 01/26/2007 have been accepted.

#### ***Response to Arguments***

13. Applicant's arguments filed on 01/26/2007 have been fully considered but they are not persuasive.

On pages 13-16 of the Remarks/Arguments section, Applicant argues that Barnhart does not teach a top cover having a vertically piercing opening, that a top cover is not taught by Mitsuharu, that Mitsuharu's device does not prevent the user from touching the hot heating plate, that structure 4 of Barnhart is not a pillar, that Barnhart does not disclose a double structure only a single structure and therefore does not

teach a pillar part, that Patel also discloses a single structure only not a double structure as required by the instant claims, that Borut's cover 14 is not a pillar, that Borut does not teach a pillar part disposed on the interior of an outer frame, that McKsymick's slider differs from the instant claims in its operation, that McKsymick's slider does not automatically move according to a vertical orientation of the table, that McKsymick's slider does not operate to control a power supply and that McKsymick is non-analogous reference. The examiner's position is as follows: the limitation top cover is taught by Mitsuharu not Barnhart where Mitsuharu's top cover is structure 17 in figure 8B that has a vertically piercing opening (unlabeled volume within structure 17); Mitsuharu's device does prevent the user from touching the hot heating plate upon placing bowl 1 on top of it; Barnhart discloses a light source (figure 3:11) where a pillar part having a pillar covering light source inside the pillar (figure 3: 11 and 4) such that an outer frame encircles an outer side of the pillar part (figure 2:12) resulting in a double structure; Patel is combined with Barnhart in addressing independent claim 19 for the limitation of the use of transparent or translucent material in constructing the incense burner and not for the pillar structure; Borut discloses a rotatable pillar part (figure 1:14 and 12) having a plurality of arm parts (figure 2:26) with bent attachment pieces on its top (figure 2:50); regarding Applicant's arguments directed to the operation of McKsymick's slider see MPEP 2114 where the combination of Barnhart and McKsymick's slider result in a structure that operate to control a power supply; McKsymick like the instant claims is in the art of supporting devices by support legs having sliding or telescoping features in order to prevent the inadvertent movement of the device (McKsymick, col.5, lines 1-8)

such that the combination of Barnhart and McKsymick results in having a stable incense burner.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

15. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R. CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 9:00-5:30.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, GLADYS J. CORCORAN can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1744

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MRC

  
GLADYS JP CORCORAN  
SUPERVISORY PATENT EXAMINER